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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-210366

DATE: June 13, 1983

MATTER OF: Essex Electro Engineers, Inc.

DIGEST:

Agency was not required to provide a list of every specific deficiency found in protester's proposal where the proposal was lacking in informational detail, and the agency reasonably believed that the degree of specific direction necessary was likely to result in technical transfusion or leveling. Under the circumstances, the agency's clear advice that the proposal was informationally inadequate in key respects, and its identification of a number, but not all, of the proposal's specific deficiencies, was adequate.

Essex Electro Engineers, Inc. protests the rejection of its technical proposal by the Department of the Army in the first step of a two-step formally advertised procurement, solicitation No. DAAK70-82-B-0127. The solicitation was a total small business set-aside for 10KW, 28 volt aviation direct current generator sets, plus a technical data package. We deny the protest.

Essex primarily challenges the adequacy of the discussions held with it after submission of its initial technical proposal. Essex contends that its revised proposal was rejected on the basis of deficiencies that the Army had not previously pointed out to the firm.

Essex states that it received a notice from the Army dated November 4, 1982, stating that its initial proposal had been found reasonably susceptible of being made acceptable. Essex asserts that this notice did not identify the specific deficiencies found in its proposal but instead set forth vague and indefinite generalities. According to Essex, numerous phone calls to the procuring activity failed to disclose any particular actions or changes needed, and it therefore responded in its revised proposal only to those specific deficiencies it "surmised" the agency had identified.

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The Army advises that after the initial technical evaluation, the evaluation board unanimously recommended that Essex's proposal be categorized as unacceptable. Nevertheless, the contracting officer determined that Essex should be given an opportunity to submit a revised proposal. He did so because of the following statement contained in Essex's cover letter to its proposal:

"Since our request for a bid extension and for additional information has been denied, we are submitting our proposal with the understanding that in the event the Government finds our proposal not acceptable, the Government will notify us and give us ample time to submit additional information."

In this regard, the first step of a two-step formally advertised procurement is similar to a negotiated procurement in that technical proposals are evaluated, discussions may be held, and revised proposals may be submitted. Baird Corporation, B-193261, June 19, 1979, 79-1 CPD 435. We have held that this first step contemplates the qualification of as many technical proposals as possible under negotiation procedures, and that an agency should make reasonable efforts to bring step one proposals to an acceptable status. Angstrom, Inc., 59 Comp. Gen. 588 (1980), 80-2 CPD 20.

Telephone discussions were held with all offerors on November 4, 1982, and were confirmed by letter of the same date, requesting submission of revised proposals by November 19. The letter to Essex indicated that the quality of its proposal was very marginal, that the proposal was incomplete and inadequate in several critical areas, and that it lacked sufficient information to allow a comprehensive technical evaluation.

The November 4 letter also advised that the technical proposal would be evaluated to determine the adequacy of the design and methodology to be used to produce the generator set, and that Essex's response should be specific and complete in every detail to verify that the generator set would meet the technical and operational requirements of the solicitation. It added that the proposed approach to performing all work must be provided in detail, and that management, engineering, and special testing must be discussed, and cautioned that simple statements that the offeror will meet the Government's requirements would not be acceptable.

The Army admits that the letter did not list specific deficiencies contained in Essex's proposal, but asserts that the proposal was so inadequate that it was not possible to provide such a list. The contracting officer states that to give the degree of specific direction required would have been tantamount to the Government assisting in proposal preparation, and would have risked transference of technical information from other proposals.

Nevertheless, during telephone conversations initiated by Essex on November 5 and 8, the contract specialist identified several specific areas of concern for which additional information was required. It was from these conversations that Essex "surmised" the eight specific deficiencies it addressed in its response to the Army's November 4 letter.

Essex contends that it was told in the telephone conversations that all other aspects of its proposal were fully conforming to the requirements of the solicitation. The Army, however, states that Essex was informed that its proposal was totally inadequate, that additional information was needed in all areas of the evaluation criteria, and that Essex's response should not be limited to only those specific areas discussed. The record contains copies of the contract specialist's memoranda concerning the phone conversations, which support the Army's position.

By letter of December 22, the contracting officer advised Essex that the firm's technical proposal was unacceptable. The letter stated that the proposal failed to provide a complete and meaningful discussion of Essex's proposed approach to performing the work needed to produce and test an acceptable set, and did not include the detail necessary to assure the Army that Essex fully understood the agency's needs and the effort required to satisfy them. The letter included specific examples to support those two points. The letter also advised that Essex's mere statements that the item it would furnish would meet the Army's needs "without a complete detailed discussion supporting such statements" were not acceptable under the terms of the solicitation.

We believe the Army acted properly in this case. Essex submitted a proposal which the Army characterizes as little more than a blanket offer to comply with the evaluated requirements of the solicitation, using one of six engine contractors identified in the proposal. In its report, the Army has provided a detailed discussion of the many areas in which it considered Essex's proposal to be lacking in the necessary detail. In fact Essex does not dispute that these deficiencies exist, but basically insists that the agency did not carry out its obligation to point them out clearly and specifically to Essex during discussions.

We cannot agree with Essex that the Army was required to provide Essex with a point-by-point description of the deficiencies in its proposal in order to bring the proposal to an acceptable status through negotiation procedures. The exact content and extent of discussions in the first step of a two-step procurement are matters of judgment primarily for determination by the agency involved, which we will not question unless the agency acts arbitrarily or unreasonably. See Ken-Mar Machine and Health Equipment, Inc., B-188529, July 14, 1977, 77-2 CPD 26 at p. 6. Obviously, no procurement should be conducted in a manner that discriminates against or gives preferential treatment to any competitor. See Gould Inc., B-192930, May 7, 1979, 79-1 CPD 311. Thus, deficiencies or weaknesses in a step one proposal need not be pointed out when to do so could result in disclosure of one offeror's innovative solution to a problem (technical transfusion). Guardian Electric Manufacturing Company, 58 Comp. Gen. 119, 126 (1978), 78-2 CPD 376. Moreover, while the goal of the first step of a two-step procurement is the qualification of offerors rather than actual competition among them, Coastal Mobile and Modular Corporation, B-183664, July 15, 1975, 75-2 CPD 39, we frequently have stated that an agency is not required, in conducting discussions in a negotiation situation, to help an offeror bring his original inadequate proposal up to the level of other adequate proposals by detailing weaknesses resulting from lack of diligence or competence (technical leveling). See Dynalectron Corporation, B-199741, July 31, 1981, 81-2 CPD 70 at p. 15.

Essex's proposal was obviously informationally inadequate, and the Army made it quite clear to Essex that this was the case. In this respect, since the only evidence on Essex's disputed contention that during the two November telephone conversations the Army contract specialist told the firm that its proposal was fully conforming except for eight specific deficiencies is Essex's unsupported allegation, the protester has not met its burden of proof on that matter. Electronic Data Systems Federal Corporation, B-207311, March 16, 1983, 83-1 CPD 264. We therefore are constrained to accept the Army's view, as reflected in the contract specialist's memoranda, that Essex was advised that its entire proposal was inadequate. Holley Electric Construction Co., Inc., B-209384, January 31, 1983, 83-1 CPD 103.

In view of the principles that guide the conduct of discussions set out above, we believe the Army properly was concerned that to provide Essex with a specific and detailed listing of every deficiency would have been improper. We are unwilling to shift the burden for proposal preparation from the offeror, which itself suspected its initial proposal was inadequate, to the agency that is called on to confirm that suspicion, by requiring the agency to tell that offeror precisely what it should have written in terms of a proposal.¹ See Dynalectron Corporation, supra.

Essex relies on our decision at 51 Comp. Gen. 592 (1972) to support its argument that the Army had an obligation to be more specific in identifying the deficiencies found in its proposal. In the cited case, we sustained a protest that an agency, in the first step of a two-step procurement, improperly rejected an offer for failure to address a specific technical requirement in its revised proposal where the agency had not earlier advised the offeror of the necessity to do so. In that case, however, the basis

¹ In this regard, Essex alleges that the other proposals were probably no more specific and detailed than its own proposal. Our review of these proposals, however, reveals that this was not the case. (We will not discuss the proposals in detail since the contracting agency is withholding contract award pending our decision in this case.)

for our holding was that the offeror's revised proposal contained sufficient assurances that the requirement would be complied with, and the technical evaluation, communicated to the offeror, itself provided guidance as to how the problem easily could be solved. That factual situation obviously differs from the one involved here.

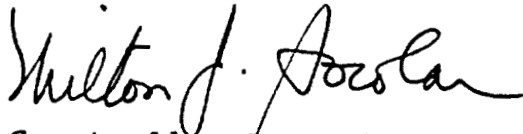
Thus, we cannot fault the Army with regard to the information it related to Essex about the deficiencies in the firm's initial proposal. We also do not believe that the Army, faced with a revised offer that it still found unacceptable, had an obligation to engage in further technical discussions with Essex rather than rejecting the revised proposal. It is unfair for a procuring agency to help one offeror through successive rounds of discussions to upgrade its proposal by pointing out those weaknesses which remain as the result of the offeror's own lack of diligence, competence or inventiveness after having been given an opportunity to correct those deficiencies.

E-Systems, Inc., B-191346, March 20, 1979, 79-1 CPD 192. An agency is not required to continue a competition to permit a single offeror another chance to improve its proposal. See Electronic Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD 15; ILC Dover, B-182104, November 29, 1974, 74-2 CPD 301.

Despite Essex's assertions, the Army appears to have made every attempt to deal fairly with Essex under the circumstances present here. Notwithstanding the evaluation board's recommendation to the contrary, the contracting officer gave Essex the opportunity to provide a revised proposal, both to generate competition and to afford Essex the time it said in its initial offer that it needed to prepare a proposal that truly represented the firm's capabilities. Also, at Essex's insistence, the agency did identify a number of specific deficiencies found in the proposal. In this respect, we find it inconsequential that the specific deficiencies identified for Essex in its telephone conversation with the contract specialist (we have accepted the Army's position that the firm also was told its entire offer was inadequate) were different from those specifically identified in the Army's notice of technical unacceptability. As stated above, the notice of technical unacceptability reiterated that Essex failed to provide a complete and meaningful discussion of its proposed approach to producing and testing a generator set that would satisfy the solicitation requirements, and that

the proposal lacked the necessary detail to assure the evaluation board that Essex possessed a full understanding of the requirements and an awareness of the magnitude of the effort required. The notice clearly stated that the specific deficiencies identified in it were only examples in support of those conclusions.

In these circumstances, we believe that the Army acted reasonably in rejecting Essex's proposal. The protest is denied.

for 
Comptroller General
of the United States